

If a Software Licensing Agreement meets all criteria under subsection (a)(1) of Section 130.1935, then neither the transfer of the software nor the subsequent software updates will be subject to Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.1935(a)(1). (This is PLR.)

August 25, 2005

Dear Xxxxx:

This letter is in response to your letter dated December 12, 2003, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) to review regulations, letter rulings and other types of information relevant to your inquiry.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to ABC for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither ABC nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

We are sending this request for a private letter ruling ('PLR') on behalf of our client, ABC, for a determination of whether their licensing agreement with XYZ is exempt from Illinois Sales Tax. XYZ, one of ABC's corporate licensing customers in Illinois, has provided ABC with a copy of Illinois Regulation Sec 130.1935, and XYZ has requested that ABC not charge XYZ for the sales tax regarding the software licensing orders. In addition, XYZ has never paid any sales tax billed to them by ABC.

#### Statement of Facts

ABC, Inc. is a STATE corporation authorized to do business in Illinois as of April 20, 2001, and has locations in CITY/STATE and CITY, Illinois. ABC is the wholly owned U.S. subsidiary and exclusive agent of ABC, a COUNTRY corporation that is in the business of developing and licensing software.

Enclosed please find a copy of the License Agreement dated June 3, 2002 between ABC, the licensor, and XYZ, the licensee/customer. XYZ claims that the orders placed under the licensing agreement are exempt from Illinois Sales Tax, because the agreement meets all five requirements stated in Sec. 130.1935(a)(1).

- A. It is evidenced by a written agreement signed by the licensor and the customer.
- B. It restricts the customer's duplication and use of the software.
- C. It prohibits the customer from licensing, sublicensing or transferring the software to a third party (except to a related party).
- D. The vendor will provide another copy at minimal or no charge if the customer loses or damages the software, and
- E. The customer must destroy or return all copies of the software to the vendor at the end of the license period.

## Issues

1) If ABC software is licensed as 'canned' software and ABC's license agreement meets all the requirements in Sec. 130.1935(a)(1), parts A through E, then is ABC's transaction subject to Illinois Sales Tax? Stated another way, is the exemption from sales tax described in Sec. 130.1935(a)(1) only available for 'custom' software or does it also apply to 'canned' software that meets the Sec. 130.1935(a)(1) requirements?

2) If ABC software is licensed as 'custom' software and ABC's license agreement meets all the requirements in Sec. 130.1935(a)(1), parts A through E, then is ABC's transaction subject to Illinois Sales Tax? Stated another way, is the exemption from sales tax described in Sec. 130.1935(a)(1) only available for 'custom' software or does it also apply to 'canned' software that has been customized to the specifications of a customer and that meets the Sec. 130.1935(a)(1) requirements?

We request a PLR to resolve the tax issues with XYZ since XYZ has refused to pay ABC for the sales tax billed to them on the invoices. ABC has submitted such taxes to the Illinois Department of Revenue on our tax returns during those periods, and ABC is not under an audit or pending litigation with the Illinois Department.

We would appreciate if Illinois Legal Counsel could accelerate your response on this PLR so we can resolve the tax issue with XYZ as soon as possible.

Enclosed please also see the properly executed power of attorney. To the best of our knowledge, ABC is not under an audit or pending litigation with IL Department, and the above information is true and correct. To the best of our knowledge, the department has not previously ruled on the same issue for ABC. ABC considers the enclosed License Agreement to be trade secret information and we request that this information be deleted from the publicly disseminated version of the private letter ruling.

If you have any questions or need further information, please contact us. Thank you in advance for your prompt attention to our request.

## DEPARTMENT'S RESPONSE

Generally, sales of "canned" computer software are taxable retail sales in Illinois. However, if the computer software consists of custom computer programs, then the sales of such software may not be taxable retail sales. See subsection (c) of 86 Ill. Adm. Code 130.1935. Sales of software are

taxable regardless of the means of delivery. For instance, the transfer or sale of canned computer software downloaded electronically would be taxable.

If transactions for the licensing of either canned or custom computer software meet all of the criteria provided in subsection (a)(1) of Section 130.1935, neither the transfer of the software nor the subsequent software updates will be subject to Retailers' Occupation Tax. A license of software is not a taxable retail sale if:

- A) It is evidenced by a written agreement signed by the licensor and the customer;
- B) It restricts the customer's duplication and use of the software;
- C) It prohibits the customer from licensing, sublicensing or transferring the software to a third party (except to a related party) without the permission and continued control of the licensor;
- D) The licensor has a policy of providing another copy at minimal or no charge if the customer loses or damages the software, or permitting the licensee to make and keep an archival copy, and such policy is either stated in the license agreement, supported by the licensor's books and records, or supported by a notarized statement made under penalties of perjury by the licensor; and
- E) The customer must destroy or return all copies of the software to the licensor at the end of the license period. This provision is deemed to be met, in the case of a perpetual license, without being set forth in the license agreement.

It appears that the "Software License Agreement" submitted with your letter between ABC Incorporated and XYZ Securities qualifies as a license of canned computer software and meets the criteria as set out in subsection (a)(1) of Section 130.1935, therefore, neither the transfer of the software nor the subsequent software updates will be subject to Retailers' Occupation Tax.

The factual representations upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter ruling, you may contact me at 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Edwin E. Boggess  
Associate Counsel

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